

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

KENNETH W. MCHENRY,	)	CASE NO. AB 92-028(WH)
	)	DCD No.: 9-89-01972
Claimant-Appellee,	)	9-91-00794
Deceased,	)	
	)	D/A: August 30, 1987
vs.	)	March 6, 1989
	)	
KAISER PERMANENTE DBA HAWAII	)	
PERMANENTE MEDICAL GROUP,	)	Jul 20 2026, 9:25 am
	)	FILED _{akw}
Employer-Appellant,	)	Labor and Industrial Relations
Self-Insured.	)	Appeals Board
	)	
	)	
	)	
	)	

SECOND AMENDED PRETRIAL ORDER

Pursuant to the Labor and Industrial Relations Appeals Board Rules of Practice and Procedure and the Board's July 17, 2026 Order Granting, in Part and Denying, in Part Employer's Motion, the Labor and Industrial Relations Appeals Board HEREBY ORDERS the following that the Board's previously issued Pretrial Order be amended as follows:

1. Issues on Appeal. The sole issue to be determined on appeal is:

Whether Claimant sustained a personal injury to the neck on August 30, 1987 (DCD Case No. 9-89-01972), arising out of and in the course of employment.

The Board will decide the foregoing issue in accordance with Chapter 386, Hawaii Revised Statutes and relevant rules.

2. In-Person Appearances and Interactive Conference

Technology. Unless otherwise ordered or noticed by the Board:

- a. The trial in this matter will be held **in-person** at the Board's office located at 830 Punchbowl Street, Room 404, Honolulu, Hawaii 96813;and
- b. All conferences and motion hearings, if any, will be held using **interactive conference technology**.

Any party who desires to utilize interactive conference technology for a trial, whether for themselves and/or their witnesses, must present their request via a motion that comports with Section 12-47-32, Hawaii Administrative Rules, Board Rules of Practice and Procedure.

Any party who desires to be present (i.e., in-person) at the Board's office for the purpose of participating in a conference, hearing, and/or trial that was otherwise or originally scheduled as an interactive conference technology event must notify the Board of their desire to appear in-person. Notification may be made orally or in writing. Such notification must be made to the Board at least three (3) business days before the conference, hearing, and/or trial.

Refer to the Board's January 30, 2024 Administrative Order 2024-01 for information about in-person appearances and the use of interactive conference technology. (See <https://labor.hawaii.gov/lirab/files/2024/03/Admin-Order-2024-01-filed-Jan-30-2024.pdf>.)

3. For each interactive conference technology proceeding, the Board will email a calendar invitation with a hyperlink to the event to the following, at the email noted:

- a. To Kenneth T. Goya at kenneth.goya@hawadvocate.com.

4. Contact the Board immediately if the foregoing email is incorrect or if the calendar invitations are not received within one week of the date of this order.

5. Any party who has not provided the Board with an email address will be conventionally served a copy of this notice.

6. The parties are required to immediately notify the Board of any changes to their own contact information, including mailing addresses, email addresses, and telephone numbers.

7. Settlement Conference. Parties may request that the Board schedule a settlement conference. The Board will consider scheduling a settlement conference upon receipt of requests for a settlement conference that:

- a. Are in writing;
- b. Are submitted by all parties (to demonstrate that all parties agree to participate in a settlement conference); and
- c. Include a confirmation from all parties that each party to the appeal shall appear for the settlement conference or be represented by an attorney and/or other representative who has full authority to settle the case and/or issue(s) on appeal at the settlement conference.

The Board may schedule a settlement conference at its discretion or may decline to schedule the requested settlement conference.

8. Trial. Trial will be held on **Tuesday, September 8, 2026** at **9:00 a.m.**, Hawaii Standard Time, or as soon thereafter as parties may be heard.

9. Any party may retain counsel if desired. An individual may participate in the trial on the individual's behalf, a member of a partnership may represent the partnership, and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association.

10. Discovery Deadlines. Discovery deadlines are established as follows:

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|----------------------------------|-------------------|
| a. Unnamed witness notification: | August 21, 2026 |
| b. Live witness identification: | August 28, 2026 |
| c. Medical reports submission: | August 28, 2026 |
| d. Discovery cut-off: | September 8, 2026 |

11. Board Ordered Medical Records Submission: On or before the medical reports submission deadline as stated above, all parties must file with the Board, at their own expense, originals or copies of all medical records regarding Claimant that were in their possession as of 14 days before the medical reports submission deadline. This submission shall be entitled "Board Ordered Medical Records Submission." Attorneys must ensure that the Board is in possession of all medical records in the attorney's possession, as well as their clients' possession. This includes but is not limited to the filing with the Board any and all subpoenaed medical records regarding Claimant; any and all medical records regarding Claimant in the possession of Insurance Carrier/Adjuster/Administrator; and any and all billing statements pertaining to medical treatment, tests, reports, and/or procedures regarding Claimant in

the possession of any party. A copy of the “Board Ordered Medical Records Submission” must be served on all parties to the appeal.

Any “Board Ordered Medical Records Submission” that is 50 pages or more must be submitted on either: (1) white paper, 8.5 x 11 inches in size, single-sided; or (2) on a CD, DVD, or USB drive (i.e., thumb drive, flash drive) accompanied by an appropriate written declaration (see paragraph, below).

The Board will not accept a “Board Ordered Medical Records Submission” as an attachment to an email to the Board if the attachment is 50 pages or more.

In the event that a party previously filed any and all records regarding Claimant that were in their possession as of 14 days before the medical reports submission deadline and no further submissions of medical records are being made, the party shall file a “Board Ordered Medical Records Submission” which affirmatively states that no further submissions of medical records are being made pursuant to the Board’s order because any and all records regarding Claimant that were in their possession as of 14 days before the medical reports submission deadline were previously filed and are part of the record on appeal.

12. Submission of reports, records, or documents by CD/DVD/USB Drive. In the event that a party submits reports, records, or documents by CD, DVD, or USB drive (i.e., thumb drive, flash drive), the filing party must also submit a written declaration made under the penalty of perjury with the CD/DVD or USB drive that confirms the following representations:

- a. That the digital file on CD/DVD or USB drive is being submitted in lieu of a paper original;
- b. That it is requested that the contents on the CD/DVD or USB drive be considered the original;
- c. That the digital file is in .pdf format and is a true and correct copy of the original paper report, record, or document;
- d. That the .pdf file is searchable (i.e., optical character recognition);
- e. That the digital media on the CD/DVD or USB drive is free of malware (e.g., self-executing files, viruses, worms, Trojan horses, ransomware, spyware, adware, scareware);
- f. That upon request by the Director and/or the Board, the filing party will immediately present to the Director and/or the Board, the original paper report, record, or document(s) on the CD/DVD or USB drive; and
- g. That the filing party understands that the filing of the CD/DVD or USB drive by the Board is not a guarantee of its inclusion as evidence and that the CD/DVD or USB drive and the information contained therein is subject to objection and/or exclusion from the record.

The Board may request, at any time following the submission of a CD/DVD or USB drive (including but not limited to, after trial and after the Board has closed the record on appeal), the original or a copy of the paper report, record, or document(s) on the CD/DVD or USB drive, from the party who submitted the CD/DVD or USB drive (“submitting party”). This original or copy of the paper report, record, or document(s) will not be returned to the submitting party and will not be made part of the record on appeal.

This original or copy of the paper report, record, or document(s) must be received by the Board no later than three (3) business days after the date of the Board's request.

This original or copy of the paper report, record, or document(s) must be accompanied by a written declaration made under the penalty of perjury that:

- a. Specifically identifies the CD/DVD or USB drive of which the Board requests the original or copies of the paper report, records, or document(s) contained thereon; and
- b. Confirms that the original or copy of the paper report, record, or document(s) being submitted is a true and correct original or copy of all of the contents of the CD/DVD or USB drive identified in the declaration and previously filed with the Board.

The submitting party is not required to provide to other parties to this appeal, a copy or copies of the original or copy of the paper report, record, or document(s) as requested by and submitted to the Board, provided that the submitting party previously provided a copy of the CD/DVD or USB drive in question to the other parties to this appeal and/or previously provided a paper copy of the contents of the CD/DVD or USB drive in question to the other parties to this appeal.

13. Exhibits. Unless stricken from the record, material filed with the Board by the applicable deadlines will be admitted into evidence and may be referenced as exhibits. At trial, any admitted evidence may be identified and used as a trial exhibit or exhibits. If the parties agree to exchange exhibit lists

identifying exhibits that they intend to use at trial, these disclosures shall not be filed with the Board.

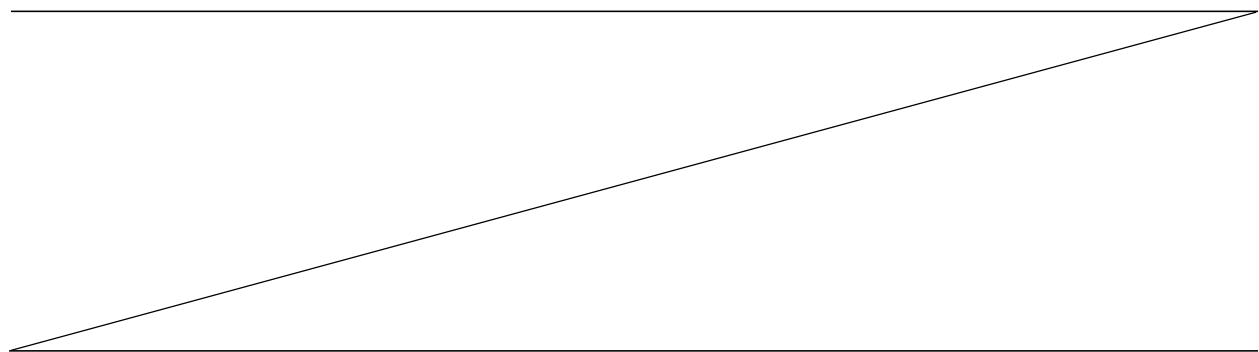
14. Filing of Documents. Refer to the Board's June 14, 2024 Administrative Order 2024-02 for information about filing documents with the Board. (See <https://labor.hawaii.gov/lirab/files/2024/06/06-14-24-Administrative-Order-2024-02-CERTIFIED.pdf>.)

15. The case file as received from the Director of Labor and Industrial Relations has been made part of the record before the Board.

16. Proceedings before the Board are governed by Chapter 91, Hawaii Revised Statutes and the LAB Rules.

17. Hereafter, this Second Amended Pretrial Order shall control the course of the proceedings and may not be amended except (1) at the discretion of the Board, (2) by consent of the parties and the Board, or (3) by order of the Board in accordance with the LAB Rules.

18. Failure to comply with the LAB Rules or Board orders, or to timely appear for any conference, hearing, or trial before the Board may be grounds for sanctions, including dismissal of the appeal.



Jul 20 2026

Dated: Honolulu, Hawai'i,



DAMIEN A. ELEFANTE, Chair



HARRY YEE, Member



DOUGLAS T. MOORE, Member

Kenneth W. McHenry v. Kaiser Permanente dba Hawaii Permanente Medical Group, et al.; AB 92-028(WH); Second Amended Pretrial Order

A digital copy of the Board's Second Amended Pretrial Order was also posted on the Board's website and will remain on the Board's website for at least 180 days from the date of filing.

Kenneth T. Goya, Esq.
For Employer/Insurance
Carrier-Appellant

A certified copy of the foregoing was served upon the above-captioned parties or their legal representatives on the date of filing noted above.

LABOR APPEALS BOARD - 830 PUNCHBOWL ST, RM 404, HONOLULU, HI 96813 - (808)586-8600

If you need a language interpreter or if you need an auxiliary aid/service or other accommodation due to a disability, please contact the Board at (808) 586-8600 and/or dlir.appealsboard@hawaii.gov as soon as possible, preferably at least ten (10) business days prior to your hearing or conference date. Requests made as early as possible have a greater likelihood of being fulfilled. If a request is received after the reply date, the Board will try to obtain the interpreter, auxiliary aid/service, or accommodation, but the Board cannot guarantee that the request will be fulfilled.

Upon request, this notice is available in alternate/accessible formats such as large print, Braille, or electronic copy.

Equal Opportunity Employer/Program
Auxiliary aids and services are available
upon request to individuals with disabilities.
TDD/TTY Dial 711 then ask for (808) 586-8600

Kenneth W. McHenry v. Kaiser Permanente dba Hawaii Permanente Medical Group, et al.; AB 92-028(WH); Second Amended Pretrial Order

This certifies that the foregoing is a
full, true, and correct copy of the
original on file in this office.

/s/ *A. Matanabe* for LIRAB